



Federal Communications Commission  
Washington, D.C. 20554

May 31, 2005

**DA 05-1549**

***In Reply Refer to:***  
1800B3-TSN

Fireside Media  
20 Samlaw Drive  
Monsey, NY 10952

Hispanic Target Media, Inc.  
c/o Meredith S. Senter, Jr., Esq.  
Philip A. Bonomo, Esq.  
Leventhal Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006

**Re: FM Broadcast Auction No. 37**  
Hispanic Target Media, Inc.  
New(FM), Zapata, Texas  
Facility ID No. 162399  
File No. BNPH-20050103ADA

New(FM), Zapata, Texas  
Facility ID No. 162400  
File No. BNPH-20050103ADC  
Applications for Construction  
Permits

Dear Applicant and Counsel:

We have before us two Form 301 applications filed by Hispanic Target Media, Inc. ("Hispanic") for new FM broadcast construction permits at Zapata, Texas (collectively the "Hispanic Applications").<sup>1</sup> Hispanic was the winning bidder in FM Broadcast Auction No. 37 ("Auction No. 37") for both Zapata permits, designated as markets FM310 (Channel 274A) and FM311 (Channel 280A). We also have before us petitions to deny each of the Hispanic Applications, timely filed January 31, 2005, by Fireside Media ("Fireside") (collectively the "Fireside Petitions").<sup>2</sup>

As with all petitions to deny, here we must first determine whether Fireside has made specific allegations of fact that, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. These specific allegations must be supported by the affidavit of a person with knowledge

---

<sup>1</sup> File Nos. BNPH-20050103ADA (FM310), BNPH-20050103ADC (FM 311).

<sup>2</sup> Also before us is the Consolidated Opposition of Hispanic Target Media, Inc. ("Consolidated Opposition"), filed February 10, 2005.

of the facts alleged, except for those of which we may take official notice.<sup>3</sup> If the specific allegations make a *prima facie* case, we next proceed to examine and weigh the evidence presented, to determine “whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”<sup>4</sup> We must also determine whether grant or denial of the application would serve the public interest.<sup>5</sup>

In its Petitions, Fireside essentially makes two arguments. First, it contends that by awarding both Zapata permits to Hispanic, the winning bidder on both, the Commission is permitting “dangerous media ownership concentration and control in the small Zapata, TX market.”<sup>6</sup> Thus, Fireside argues that, upon grant of the Hispanic Applications, Hispanic will have an excessive ownership interest in the Zapata, Texas radio market, and demands we deny the Hispanic Applications unless Hispanic voluntarily relinquishes one of the permits.

Second, Fireside argues that Hispanic “may be fronting or have an agreement with an existing broadcaster to whom [Hispanic] would ostensibly sell all or a part of its awarded frequencies.”<sup>7</sup> In essence, Fireside alleges that Hispanic bid on the Zapata permits on behalf of an undisclosed real party or parties in interest.

On their face, Fireside’s allegations would, if true, suggest that grant of the Hispanic Applications would not be in the public interest. However, as Hispanic points out, Fireside’s facial allegations are not, as required, supported by the affidavit of a person with actual knowledge, nor may we officially notice any of the facts alleged.<sup>8</sup> While the allegations are verified by Fireside’s proprietor “to the best of [his] knowledge and belief,”<sup>9</sup> nowhere does Fireside set forth the source of that knowledge and belief. Allegations consisting merely of ultimate, conclusory facts or more general affidavits are not sufficient.<sup>10</sup>

Specifically, Fireside concludes that because there is currently only one radio station licensed at Zapata, grant of the Hispanic Applications would result in a three-station Zapata “market,” with Hispanic owning two-thirds of the stations therein. However, because Zapata is not located in an Arbitron Metro Survey Area, the Commission uses a contour-overlap methodology to determine the size of the market and, thus, the in-market ownership limits.<sup>11</sup> Under our rules, in a market with 14 or fewer stations, any one entity may have a cognizable interest in up to five stations in the market, but no more than 50 percent of the stations in the market.<sup>12</sup> In the

---

<sup>3</sup> 47 U.S.C. § 309(d).

<sup>4</sup> *Citizens for Jazz on WRVR v. F.C.C.*, 775 F.2d 392, 395 (D.C. Cir. 1985).

<sup>5</sup> *Astroline Communications Co. v. F.C.C.*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (“*Astroline*”). See also *Rocky Mountain Radio Co., LLP*, 15 FCC Rcd 7166, 7167 (1999).

<sup>6</sup> Fireside Petition to Deny Application No. BNPH-20050103ADC (“Second Fireside Petition”) at 2.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Consolidated Opposition at 3.

<sup>9</sup> See, e.g., Second Fireside Petition at 7.

<sup>10</sup> *Gencom, Inc. v. F.C.C.*, 832 F.2d 171, 180 n.11 (D.C. Cir. 1987).

<sup>11</sup> 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13729-30 (2003), *aff’d in part and remanded in part*, *Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004), *stay modified on reh’g*, No. 03-3388 (3d Cir. Sept. 3, 2004).

<sup>12</sup> 47 C.F.R. § 73.3555(a)(1)(iv).

multiple ownership exhibit provided in response to Section II, Item 4 of the Hispanic Applications, Hispanic has presented evidence showing that, using the current contour-overlap methodology, there would be four stations in the Zapata market. Thus, Hispanic may have a cognizable interest in up to two stations. Because Hispanic has no interest in either KBAW(FM), Zapata, Texas, or KDBR(FM), Mirando City, Texas, its ownership of the two new permits comports with our rules.<sup>13</sup>

As for Fireside's second major argument, it too suffers from lack of proper evidence. The allegation that Hispanic is merely a front for an undisclosed real party in interest is mere speculation. For example, Fireside states that "two broadcast novices who have 'no attributable broadcast interests' surface out of the blue, and are able to pull over 2.5 million dollars out of the blue to cover net bidding payments for a myriad of awarded frequencies in Auction 37."<sup>14</sup> Fireside contends that these facts oblige the Commission to "use its subpoena powers to find out what agreements may exist between [Hispanic] and their capital agent, and what relationship [Hispanic] may have with an existing broadcaster with respect to the pending Zapata construction permits, unless [Hispanic] voluntarily relinquishes one of these frequencies."<sup>15</sup> However, in its Form 175 application, filed prior to Auction No. 37, as well as the Hispanic Applications, Hispanic has certified that no such agreements exist and that there are no parties to the applications other than the listed principals. Fireside has not presented evidence to challenge these certifications. Absent such evidence, we need not make further inquiry of Hispanic.

For the foregoing reasons, the Fireside Petitions ARE DENIED. We have examined the Hispanic Applications, and are satisfied that Hispanic is fully qualified to be a Commission licensee, and that grant of the Hispanic Applications is in the public interest. Therefore, Hispanic will be listed in a subsequent Public Notice announcing that the construction permits for the above-listed facilities are ready to be granted.<sup>16</sup>

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

---

<sup>13</sup> We need not address Fireside's unfounded *ad hominem* challenge to the staff's handling of Auction No. 37. We reject as patently false Fireside's contention that we would have treated the Hispanic Applications differently had they been submitted by a "famous consolidator" such as "Clear Channel or Cumulus" rather than by a minority-owned broadcaster. Second Fireside Petition at 3-4. As discussed in the text, any applicant(s) placing winning bids for the two Zapata permits would have been directed to file complete long form applications, and would have been required to provide multiple ownership information in response to Section II, Item 4 of Form 301. See Instructions for FCC 301 at 6: "This item [Section II Item 4] requires that the applicant either certify compliance with, or request waiver of, the Commission's broadcast ownership rules, including restrictions on investor insulation and participation of non-party investors and creditors. Radio applicants *must* submit an Exhibit in either case, *i.e.*, an Exhibit is required demonstrating compliance with 47 C.F.R. § 73.3555(a) or, if the applicant cannot certify compliance, requesting a waiver or exemption, with adequate justification." (emphasis added)

<sup>14</sup> Second Fireside Petition at 6.

<sup>15</sup> *Id.*

<sup>16</sup> See generally *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 159885-86 (1998).